Ralon bin Banas v Public Prosecutor

COURT OF APPEAL (KUALA LUMPUR) — CRIMINAL APPEAL NO S–05–87 OF 1998
SHAIK DAUD, SITI NORMA YAAKOB AND DENIS ONG JJCA
15 MAY 2000

Criminal Law *— Murder — Defence — Provocation — Appellant wounded by deceased on the right hand — Whether killing was vicious and superficial — Whether provocation proved*

The appellant was convicted for an offence under s 304 (first limb) of the Penal Code and was sentenced to 15 years imprisonment. The appellant appealed against the sentence. It was the contention of the appellant that there was some provocation by the deceased since the appellant was wounded by him on the right hand.

Held, dismissing the appeal:

The court found that the killing was a senseless one especially when it originated from a minor quarrel. The court also found the killing was vicious and cruel. Further medical evidence showed that the wound on the appellant's right hand was a superficial one and in any case, in spite of the wound he was able to hold the gun in his right hand when he fired the shots. The court found no reason to interfere with the finding of the trial judge as he had considered all factors including that of public interest (see p 243B–D).

[Bahasa Malaysia summary

Perayu dituduh melakukan kesalahan di bawah s 304 (bahagian pertama) Kanun Keseksaan dan telah dijatuhkan hukuman penjara selama 15 tahun. Perayu telah merayu terhadap hukuman tersebut. Adalah pendapat perayu bahawa wujud provokasi oleh si mati memandangkan perayu telah dicederakan oleh beliau di tangan kanan.

Diputuskan, menolak rayuan tersebut:

Mahkamah mendapati bahawa pembunuhan tersebut adalah tidak munasabah kerana ia bermula daripada satu pertengkaran kecil. Mahkamah juga mendapati pembunuhan tersebut adalah ganas dan kejam. Tambahan pula, keterangan perubatan menunjukkan bahawa kecederaan pada tangan kanan perayu adalah ringan dan dalam mana-mana keadaan, walaupun tercedera beliau mampu memegang pistol dengan tangan kanan beliau semasa membuat tembakan. Mahkamah mendapati tiada sebab untuk campur tangan dengan penemuan hakim perbicaraan kerana beliau telah mempertimbangkan semua faktor-faktor termasuklah kepentingan awam (lihat ms 243B–D).]

Notes

For cases on murder generally, see 4 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 887–919 and 964–969.

Legislation referred to

Penal Code ss 302, 303, 304

Appeal from: Criminal Trial No K–46–01 of 1998 (High Court, Kota Kinabalu)

VK Liew (*VK Liew & Co*) for the appellant.
Zauyah bte Loth Khan (Deputy Public Prosecutor) for the respondent.

Shaik Daud JCA (delivering judgment of the court): This is an appeal against the sentence imposed by the Kota Kinabalu High Court upon a conviction for an offence under s 304 of the Penal Code. The appellant was originally charged for an offence of murder under s 302 of the Penal Code.

At the conclusion of a month long trial, the learned judge rejected the plea of self-defence put forward by the appellant but found that on the evidence adduced both for the prosecution and the defence, there were sufficient evidence to bring the case within limb 1 to s 304 of the Penal Code. Accordingly, the learned judge reduced the charge from s 302 to s 304 (first limb) and convicted the appellant on the reduced charge. After hearing the appellant's plea in mitigation through his counsel and a submission by the learned deputy public prosecutor, the learned judge imposed a sentence of 15 years to take effect from the appellant's date of arrest. Against this sentence, the appellant now appeals.

It is the submission of learned counsel for the appellant that in the light of the evidence and the plea of mitigation put forward by the appellant, the sentence of 15 years is excessive.

The brief facts leading to the incident are that the appellant is a sergeant in the police force, having joined the force on 18 October 1963. At the time of the incident, he was the Assistant Investigation Officer in the Criminal Investigation Department, stationed in Keningau, Sabah. Evidence shows that the appellant and the deceased had a small argument when the deceased accidentally broke the spectacle belonging to the appellant. The sole eye witness to the incident which caused the deceased's death, was his mother. She testified that on the night of the incident, she saw the appellant and the deceased near her house arguing. She said the appellant came up to her and showed a wound on his right hand saying that the deceased had injured his hand. He said he was a policeman and that he would shoot the deceased. She noticed the appellant's right hand was bleeding, but he was holding a gun in that hand. She saw that her son, the deceased, was behaving as if he was drunk, as he was leaning on her. She also testified that, she knelt down and pleaded with the appellant not to shoot her son but the appellant kept saying 'tembak mati'. She continued pleading but the appellant fired one shot towards the deceased. She continued to plead with the appellant but the appellant asked her to keep quiet. Then the appellant

fired three more shots whereupon she saw her son fell to the ground. She ran to her son but saw he was not moving or breathing and she shouted for help but the appellant just stood there and threatened to shoot at her if she did not keep quiet. Evidence showed that the appellant fired five shots but three were fatal with one penetrating the heart.

We found that the killing was a senseless one especially when it originated from a minor quarrel over a pair of broken spectacles. We also found the killing was vicious and cruel. The learned judge took into account all factors including the fact that the appellant has had a clean and long service record in the police force. It was the contention of the learned counsel for the appellant that there was some provocation by the deceased since the appellant was wounded by him on the right hand. Medical evidence showed that the wound was a superficial one and in any case, in spite of the wound he was able to hold the gun in his right hand when he fired the shots.

We found no reason to interfere with the finding of the learned trial judge as he had considered all factors including that of public interest. We had dismissed the appeal and confirmed the sentence imposed.

Appeal dismissed.

Reported by Jafisah Jaafar